

**MCI Bona Fide Request For Switched Combination of Unbundled Elements**

This BFR uses the format required by Ameritech. **Bold** typeface identifies a question posed by Ameritech. MCI's response is in plain typeface.

**1) Requested By**

**Company:** MCI

**Address:** 8521 Leesburg Pike  
Vienna, VA, 22182

**Contact:** Kevin Moss

**Phone:** 703-918-6086

**Fax:** 703-918-0756

**Date of Request:** 23 May 97

**2) Description of the network interconnection capability, function, system, information or feature, or combination requested**

MCI wishes to establish a process to unbundle local switching from other network elements provided by Ameritech. At this first test stage MCI intends to provide its customers with MCI DA and OS services as well as a direct link to the MCI local switch. MCI intends to follow this with a further level of unbundling involving the replacement of elements provided, in this combination, by Ameritech, with elements provided by MCI.

For this test, MCI wishes to lease a simple service delivery mechanism, consisting of a specified combination of elements at selected Ameritech end offices. These elements will establish an MCI platform presence at the selected end offices.

The initial combination will be elements required to provide switched service to customers, consisting of combinations of loops, unbundled switching (including ports), dedicated, shared and common transport, DA, OS and 911. This will enable MCI to offer its customers end to end service using a combination of its own network elements and network elements provided by Ameritech. For the purposes of this BFR, MCI has identified a specific End Office at which to establish the first customer service.

MCI intends to provide some of its customers with DA and OS service using MCI's DA and OS platforms. MCI also intends that calls to MCI local NXXs are routed via a direct link to MCI's own switches in the vicinity.

**3) Is this a request for a modification or combination to existing services or network elements. If so, please explain the modification or combination and describe the existing service(s) or element(s) or indicate its name.**

It is a simple modification of the service described as Unbundled Element Platform with Operator Services and Directory Assistance. (Interconnection contract Schedule 9.3.4, combination 1). The modification requires the establishment of MCI specified routing of calls to MCI service platforms.

Further modifications will replace elements provided by Ameritech with elements provided by MCI. MCI believes that these are all part of the requirement for Ameritech to provide unbundled switching, not additional or different combinations of elements requiring separate BFRs.

**4) Is this a service or network element available from any other source or a service or network element already offered by Ameritech. If yes, please provide the source's name and the name of the service or network element.**

Unbundled switching and combinations of elements are available from other ILECs. MCI is not aware if they are currently provided by Ameritech, but would expect Ameritech to be aware of such information and to advise MCI immediately.

**5) Is there anything special about the manner that you would like this feature, function or combination to operate ?**

For the immediate test MCI expects the combination to operate as follows:

1) At each specified Ameritech facility MCI will establish a pre-specified network configuration consisting of :

- Dedicated/shared transport and port facilities (specified in Attachment 2) to convey specified classes of call (Directory Assistance, Operator Services and calls to MCI's local switch) to MCI facilities.
- Common facilities will be used to deal with all other classes of call and also for Directory Assistance, Operator Services and calls to MCI's local switch in congestion and blockage situations.

A set of line class codes (identified in Attachment 1) will be established identifying a range of calling options that MCI will offer to its customers.

2) Following Ameritech's advice that the work is completed, MCI will place with Ameritech, individual orders for loops and ports to be provided from the specified facility, to customers, against the pre-specified network configuration. MCI will

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include in the orders the line class code to be provided to the customer. Ameritech will provide an ANI for each customer.

3) MCI may carry out a series of tests to ensure the efficacy of the process, for example:

- calls to ensure that routing has been implemented correctly.
- move a customer to a different line class code.
- change the routing details of a particular line class code using the existing elements.

4) Ameritech will provide to MCI:

- Actual line class codes to be used when customer order placed
- Daily Call Billing Records consistent with the arrangements specified in the interconnection contract.
- Monthly element and call billing to MCI consistent with the arrangements specified in the interconnection contract.
- Weekly traffic data for MCI dedicated trunking.
- Process for MCI advising Ameritech of amendments to the NXX list for local call routing.
- Process for setting this combination up at additional end-offices.
- Maintenance consistent with that specified in the interconnection agreement.
- Process for replacing elements provided by Ameritech with elements provided by MCI.

6) If possible, please include a drawing or illustration of how you would like the request to operate and interact with the network

See attachment 4

7) Please describe the expected location life, if applicable, of this capability (i.e. period of time you will use it). Do you view this as a temporary or long range solution ?

MCI expects this capability to have a medium to long range life in this and other locations in the Ameritech region.

**8) If you wish to submit this information on a non-disclosure basis, please indicate this here. If non-disclosure is requested, either attach a prepared Ameritech non-disclosure agreement or request one to be sent to you for completion or identify an existing agreement that covers the transaction, and properly identify any information you consider confidential.**

MCI is not submitting this on a non-disclosure basis other than that covered in the MCI/Ameritech interconnection agreement.

**9) Where do you want this capability deployed ?**

MCI will want this capability deployed at locations to be specified across all states in the Ameritech region (Illinois, Michigan, Ohio, Wisconsin, Indiana) . For the purposes of setting up a first model, the following location is required:

**A) State: Illinois**

**B) Major Metropolitan Area: Chicago**

**C) Specific Wire Center: Beverly Wire Center, CLLI Code: CHCGILBECGO**

**10) What is the expected demand for each location. e.g. estimated number of customers, subscriber lines, number of units to be ordered:**

Initially at this test site only a small number of line and port orders (less than 10) will be placed to ensure the efficacy of the process. However MCI intends to deploy this as a key service delivery method to its customers. Forecasts will depend upon the price and quality of the service.

MCI is expecting that the pre-specified network will be provisioned within 15 days of receipt of this BFR, such that port and loop orders can be placed on day 16.

**11) What are your pricing assumptions ? In order to potentially obtain lower non-recurring or recurring charges you may specify quantity and/or term commitments you are willing to make. Please provide any price/quantity forecast indicating one or more desired pricing points (use additional sheets as necessary)**

MCI expects that prices will be charged for unbundled elements as agreed in the Interconnection Agreement between the parties.

**12) Please include any other information that could be of assistance to Ameritech in the evaluation of this service**

Attachment 1 describes the line classes that MCI intends to be able to provide to its customers. MCI's expectation is that Ameritech will allocate specific codes to each of these classes of service and advise MCI of these codes. MCI will use these codes when ordering loop and port service for a specific customer.

Attachment 2 describes for specified call types (DA, OS, local MCI NXXs, and all other calls) the dedicated, shared and common routing that MCI requires to be provisioned by Ameritech. Also described are the overflow requirements in cases of congestion, blockage or other deterioration of service on the dedicated/shared trunks.

Attachment 3 identifies the MCI local NXXs. Calls to these NXXs are to be routed to the dedicated transport link established for this purpose.

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**Attachment 1 - Description of Line Classes**

	<b>Line Class</b>					
<b>Dedicated Routing Requirements</b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>	<b><u>6</u> Spare</b>
<b>MCI DA</b>	<b>X</b>					
<b>MCI OS</b>		<b>X</b>				
<b>MCI Local</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		
<b>All other calls via ILEC Tandem</b>	<b>X</b>	<b>X</b>	<b>X</b>			
<b>All calls via Common Facilities</b>					<b>X</b>	
<b>Line Class Code Allocated by Ameritech</b>						

**Attachment 2 - Dedicated Routing Description**

<b>Call Type</b>	<b>Dedicated Routing Requirement - Where Specified by "X" in Line Class Code Table</b>
<b>DA</b>	<b>Call Handled By:</b> MCI DA platform <b>Shared Capacity:</b> 1 X DS1 <b>Trunk Port Requirement:</b> 1 X DS1 <b>Direction:</b> One way <b>Z End Address:</b> MCI collocation at Wabash CO. CLLI - CHCGILWB <b>Signaling:</b> SS7 <b>Digit Pulsing:</b> 7 or 10 <b>NXX:</b> 411 <b>Overflow, blockage and congestion provision:</b> Call routed to Ameritech DA across dedicated trunk to tandem.
<b>OS</b>	<b>Call Handled By:</b> MCI OS Platform <b>Dedicated Capacity:</b> 1 X DS1 <b>Direction:</b> One way <b>Trunk Port Requirement:</b> 1 X DS1 <b>Z End Address:</b> MCI collocation at Wabash CO. CLLI - CHCGILWB <b>Signaling:</b> SS7 <b>Digit Pulsing:</b> 10 <b>NXX:</b> 0 <b>Overflow Provision:</b> Call routed to Ameritech OS across dedicated trunk to tandem.
<b>Local calls to MCI facilities customers</b>	<b>Call Handled By:</b> MCI Chicago CO <b>Dedicated Capacity:</b> 1 X DS1 <b>Direction:</b> One way <b>Trunk Port Requirement:</b> 1 X DS1 <b>Z End Address:</b> MCI collocation at Wabash CO. CLLI - CHCGILWB <b>Signaling:</b> SS7 <b>Digit Pulsing:</b> 10 <b>NXX:</b> Identified in Attachment 3 <b>Overflow Provision:</b> Call routed to Ameritech tandem across dedicated trunk to tandem.
<b>All other calls</b>	<b>Call Handled By:</b> AIT unbundled tandem facility <b>Dedicated/Shared Capacity:</b> 1 X DS1 <b>Direction:</b> One way <b>Trunk Port Requirement:</b> 1 X DS1 <b>Z End Address:</b> AIT tandem subtended by Beverly CO. <b>Signaling:</b> SS7 <b>Overflow Provision:</b> Call routed across Ameritech common facilities

The FCC 1996 First Report and Order, adopted August 1, 1996, paragraph 297 states: "new entrants will likely lack knowledge about the facilities and capabilities of a particular incumbent LEC's network. We further believe that incumbent LECs must work with new entrants to identify the elements the new entrants will need to offer a particular service in the manner the new entrants intend." In accordance with this MCI has attempted to identify correctly all of the elements required to offer the described end to end service to end users. MCI expects Ameritech to identify any additional elements needed to establish service.

**Attachment 3 - NPA NXX Listing For Local calls to MCI facilities customers**

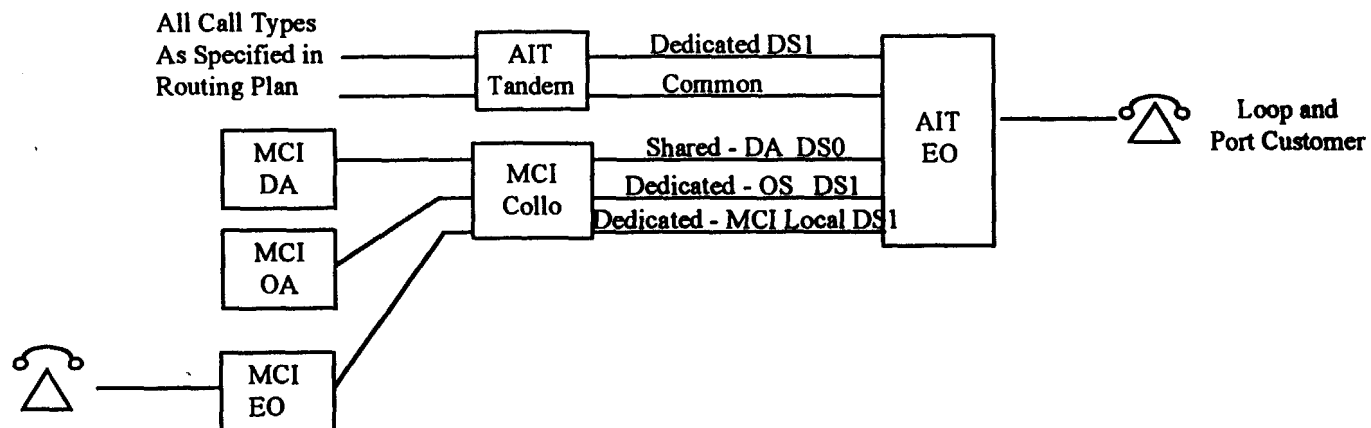
NPA	NXX
312	470
630	259
630	276
630	315
630	317
630	382
630	395
630	433
630	438
630	446
630	475
630	696
708	215
708	290
708	297
708	303
708	318
708	330
708	391
708	402
708	459
708	551
708	566
708	608
708	622
708	625
708	657
708	678
708	740
708	816

708	883
773	681
773	756
773	799
773	887
773	893
773	896
773	948
773	967
773	981
773	985
847	221
847	378
847	385
847	403
847	423
847	430
847	447
847	448
847	460
847	596
847	597
847	598
847	892
847	904
847	906



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## Attachment 4 - Illustration of Network





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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**ILLINOIS COMMERCE COMMISSION  
On Its Own Motion**

:  
:  
: **No. 96-0404**  
:  
:

**Investigation concerning Illinois Bell Telephone  
Company's compliance with Section 271(c) of the  
Telecommunications Act of 1996**

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**SUPPLEMENTAL INITIAL BRIEF OF THE STAFF OF  
THE ILLINOIS COMMERCE COMMISSION**

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May 21, 1997

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**I. INTRODUCTION**

**NOW COMES** the Staff of the Illinois Commerce Commission ("Staff"), and for its Supplemental Initial Brief in this proceeding, states as follows:

The Commission initiated these evidentiary proceedings in order to properly discharge its role as consultant to the Federal Communications Commission ("FCC") and as an information gatherer for the Department of Justice ("DOJ") on matters related to Ameritech Illinois d/b/a Illinois Bell Telephone Company's ("Ameritech" or "the Company") compliance with Section 271(c) of the Telecommunications Act of 1996. Order Initiating Investigation, Illinois Commerce Commission, On its Own Motion, Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271 (c) of the Telecommunications Act of 1996, Docket No. 96-0404, p. 2 (Ill. C.C. August 26, 1996), see

also, Pub. L. No. 104-104, 110 Stat. 56, *to be codified at* 47 U.S.C. §§ 151 *et seq.* ("the Act") Thus, these proceedings have a two-fold purpose. The first purpose is to give the Commission the legal and factual information it needs to advise the FCC as to Ameritech's progress in meeting the competitive checklist set forth in Section 271(c)(2)(B)(i). The second purpose underlying this proceeding is to develop an evidentiary record to enable the DOJ and the FCC to evaluate Ameritech's anticipated Illinois application for interLATA relief, applying the standards set forth in Section 271(d)(3). The standards set forth in Section 271(d)(3) include a component which requires the FCC to determine whether the "requested authorization is consistent with the public interest, convenience and necessity." 271(d)(3)(C). To understand the relevance of a particular piece of evidence, one must keep in mind the two different purposes for which evidence was introduced into the record.

Some evidence was introduced into this record for the purpose of giving the Commission the information it needed to evaluate Ameritech's compliance with the competitive checklist. The inquiry the Commission is required to make for this phase of the proceeding, is a simple, relatively straightforward inquiry. The Commission must determine whether Ameritech is actually providing a checklist item to a facilities-based carrier serving both business and residential customers. ("qualifying carrier"). In order to find that Ameritech is providing a checklist item to a qualifying carrier, the Commission must determine that the qualifying carrier is able to order and receive the item in sufficient quantities and in a manner that will allow the competitor to provide service to its own customers on a commercial basis.

On the other hand, some evidence that was introduced into this record is not directly related to checklist compliance. Instead, this evidence will aid the DOJ and the FCC in their evaluation of Ameritech's anticipated Illinois application for interLATA relief. Once it is determined that Ameritech has met the competitive checklist, the FCC and the DOJ may use this information to determine whether it is in the public interest, convenience and necessity for Ameritech to obtain interLATA relief.

It is in keeping with the dual purpose for which this proceeding was initiated that Staff's presentation, specifically with reference to its Initial and Reply Briefs, has been divided into two sections. The first section of Staff's presentation has dealt almost exclusively with Staff's interpretation of Section 271(c). In the second portion of its presentation, Staff has reviewed the evidence with respect to checklist compliance, as well as the evidence which relates to the inquiry in which the FCC and the DOJ will engage. Staff's Supplemental Initial and Reply Briefs will maintain this structure.

These supplemental proceedings were initiated upon Ameritech's motion, to adduce additional evidence in response to the Hearing Examiner's conclusion in the March 6, 1997 Proposed Order, that Ameritech had failed to demonstrate compliance with six out of fourteen checklist items. The Examiner ruled, that the parties "may supplement the record with any new or updated information with respect to any of the checklist items ... Any supplement or update shall either relate to new or previously unavailable information." During the supplemental proceedings, Staff presented testimony addressing the following

issues: common transport, dark fiber, poles, ducts, conduits and rights-of-way (Supplemental Direct Testimony of S. Rick Gasparin, ICC Staff Exhibit 3.03); Operations Support Systems ("OSS") (Supplemental Direct Testimony of Samuel S. McClerren, ICC Staff Exhibit 5.03P); unbundled loops (Supplemental Direct Testimony of Samuel S. McClerren, ICC Staff Exhibit 5.03P); dialing parity (Supplemental Direct Testimony of Sam E. Tate, ICC Staff Exhibit 6.03); and, wholesale services and unbundled local switching (Direct Testimony of Christopher Graves, ICC Staff Exhibit 7.00). In addition, Staff presented the Supplemental Direct Testimony of Stacy L. Buecker, (ICC Staff Exhibit 2.02), who testified to the fact that as of April 16, 1997, AT&T Communications of Illinois ("AT&T") had begun to provide resold local service and access services to Illinois residential customers in Ameritech's access area C.

## **II. STAFF'S INTERPRETATION OF SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996 HAS NOT CHANGED AS A RESULT OF THE SUPPLEMENTAL PROCEEDINGS**

As Staff explained in its Initial and Reply Briefs, the requirements of subparagraphs (A) and (B) of Section 271(c)(1) are mutually exclusive, such that once a Bell Operating Company ("BOC") receives a request or requests for interconnection and access from a qualifying carrier, and those requests encompass all of the checklist items, the BOC may proceed to obtain interLATA relief by meeting the requirements of Section 271(c)(1)(A). The BOC may only obtain interLATA relief using subparagraph Section 271(c)(1)(B) if the BOC can demonstrate that a qualifying carrier has: failed to comply with an implementation schedule contained in a agreement; or, has failed to negotiate in good faith. This



legislative scheme (which may be characterized as a "Track A" versus "Track B" approach) is continued with respect to the checklist requirements under Section 271(c)(2).

Specifically, subparagraph (A) of Section 271(c)(2) provides as follows:

(2) SPECIFIC INTERCONNECTION REQUIREMENTS-

(A) AGREEMENT REQUIRED- A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—

- (i) (I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or  
  
(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and
- (ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

47 U.S.C. §271(c)(2)(A).

The language of subparagraph (i) of Section 271(c)(2)(A) incorporates the alternative methods by which a BOC may comply with Section 271(c)(1) by requiring a BOC to establish: (I) that it is providing access and interconnection pursuant to one or more agreements described in Section 271(c)(1)(A); or, (II) that it is offering access and interconnection pursuant to a statement described in Section 271(c)(1)(B). 47 U.S.C. §271(c)(2)(A)(i). Given the mutually exclusive nature of the conditions set forth in subparagraphs (A) and (B) of Section 271(c)(1), a BOC may rely on "one or more agreements described in paragraph (1)(A)" or "a statement described in paragraph (1)(B)" - but not both. See 47 U.S.C. §§271(c)(1)(A) and (B), and 271(c)(2)(A)(i)(I) and (II).

Subparagraph (ii) of Section 271(c)(2)(A) clearly requires a BOC to demonstrate that the particular access and interconnection which applies under subparagraph (i) also meets the requirements of Section 271(c)(2)(B) -- the competitive checklist. 47 U.S.C. §271(c)(2)(B)(ii).<sup>1</sup> Indeed, Ameritech acknowledges that under Track A the "access and interconnection" which must meet the checklist requirements pursuant to Section 271(c)(2)(A)(ii) is the same "access and interconnection" described in Sections 271(c)(1)(A) and 271(c)(2)(A)(i)(I). See Ameritech Illinois' Legal Memorandum In Response To Order Initiating Investigation dated September 27, 1996 ("IBT Mem."), pp. 17-18. Thus, if a BOC is proceeding under Track A, that BOC meets the requirements of Section 271(c) if it demonstrates that the access and interconnection it is providing pursuant to one or more approved agreements with facilities-based competitors meets the competitive checklist requirements. On the other hand, if a BOC is proceeding under Track B, that BOC meets the requirements of Section 271(c) if it demonstrates that:: it has not received a request for interconnection as described in Section 271(c)(1)(B); a competitor has failed to comply with an implementation schedule contained in an interconnection agreement; or, a competitor has acted in failed to negotiate in good faith. In the event one of these situations occurs, the BOC may demonstrate that it is offering access and interconnection

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<sup>1</sup> The relationship between "checklist compliance" subparagraphs (A) and (B) of Section 271(c)(1) is carried over to the standards for interLATA relief contained in Section 271(d)(3)(A): A BOC must establish that, "(i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A), [it] has fully implemented the competitive checklist in subsection (c)(2)(B); or (ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B), such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B)" 47 U.S.C. §271(d)(3)(A)(i) and (ii).

pursuant to an approved or effective Statement of Generally Available Terms and Conditions which meets the competitive checklist requirements. Therefore, the analysis which must be performed to determine checklist compliance is dependent upon whether the BOC satisfies the requirements of subparagraph (A) or subparagraph (B) of Section 271(c)(1).

There can be no doubt that Ameritech has received several requests for access and interconnection since passage of the Telecommunications Act of 1996 ("1996 Act"). There can also be no doubt that Ameritech has received requests for all items set forth in the competitive checklist. Ameritech has not alleged that a competitor has failed to comply with an implementation schedule contained in an interconnection agreement. Moreover, Ameritech has not alleged that a competitor has failed to negotiate in good faith. Thus, as the record now stands, Ameritech is required to seek interLATA relief via "Track A."

**A. *A BOC that has Entered into one or more Interconnection Agreements May Use "Track B" to Obtain InterLATA Relief If it Can Demonstrate that a Competing Carrier has Failed to Comply with the Implementation Schedule Contained in an Agreement***

Those who criticize Staff's interpretation of Section 271(c) of the 1996 Act, suggest that the interpretation contains a fatal flaw; if competitors refuse to order a specific item set forth in the competitive checklist, Ameritech will be forever foreclosed from obtaining interLATA relief. Those who make these assertions never address the "escape hatch" Congress provided to BOC's if such a turn of events were to occur; namely, that if a

competitor fails to comply with the implementation schedule for a checklist item, or fails to negotiate in good faith, the BOC may demonstrate compliance with the competitive checklist for that item through a Statement of Generally Available Terms and Conditions under "Track B."

In its Reply Brief in the initial stage of these proceedings, Ameritech stated that **Staff's theory** contains a false premise: "that Ameritech Illinois' interconnection agreements have implementation schedules requiring competing carriers to actually order all checklist items. Ameritech Reply Brief, p. 28 (emphasis in original). The assertion begs the question. Moreover, it is not Staff's theory which contains this premise. It is **Section 271(c) of the 1996 Act** which contains this premise. Ameritech would have the Commission read out of Section 271(c) the requirement that implementation schedules be included in interconnection agreements merely because implementation schedules are not included in these agreements. Ameritech cites no authority for the proposition that state commissions may modify federal laws when Companies fail to abide by the terms of those laws.; therefore, the Commission should decline Ameritech's invitation to do so.

The Hearing Examiner echoed Ameritech's concerns in the Proposed Order, stating that :

The interpretation of Section 271 offered by Staff and the IXC's would indeed indefinitely bar Ameritech from entering the long distance market. This is because, first of all, it is unlikely that facilities-based providers will ever request every checklist item and Staff acknowledges this. Second, under the interpretation of Staff and the IXC's "Track B" is not an option because Ameritech already has received requests for access and interconnection pursuant to "Track A."

Proposed Order, p. 7. Once again, these assertions fail to address the requirement that BOC's place implementation schedules into their interconnection agreements.

In its Reply Brief, Staff reviewed the interplay between "Track A's" requirement that BOC's demonstrate the existence of a facilities-based carrier serving both business and residential customers, and the "escape hatch" Congress provided to BOC's via "Track B." The legislative history which underlies Section 271(c) demonstrates that Congress' intent in providing for a facilities-based carrier requirement was to ensure that a BOC was facing facilities-based competition from a carrier using facilities not owned by the BOC. The Conference Report indicates that Congress believed that cable companies -- with their existing connection to 95% of the United States homes -- were likely to be the "facilities-based" competitors envisioned under Section 271(c)(1)(A). H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 147-48 (1996). However, Congress recognized that it might be wrong; cable companies may not become the facilities-based competitor contemplated under the Act. For this reason, Congress provided that a BOC could avail itself of "Track B," if it could demonstrate that: no carrier had requested access and interconnection; a carrier had failed to comply with an implementation schedule contained in an interconnection agreement; or, that it could demonstrate that a carrier had failed to negotiate in good faith.

In the Proposed Order, the Examiner rejected this approach. Instead, the Examiner took Ameritech's view that the term provide as used in Section 271 (c)(2)(B) means either "actually furnish" or "make available." Proposed Order, p. 7. To that end, the Examiner set

forth a test which states that an item will be deemed to have been provided if the Commission finds, with substantial certainty that:

1. the item is currently available and can be ordered immediately and the competing carrier can receive, within a reasonable time, the item in sufficient quantities and in a manner that will allow it to provide service to its own customers on a commercial basis;
2. all systems necessary are in place allowing Ameritech to immediately provide said item and in instances where said item has been ordered or requested it is actually being furnished;
3. if applicable, all testing necessary has been completed with respect to said item;
4. this Commission is substantially certain that the checklist item will function as expected;
5. said item can be provided to the requesting party on a non-discriminatory basis and at a quality level that is at parity with the quality that Ameritech itself receives;

The test set forth above is the antithesis of a checklist. A checklist is a means through which readily discernible facts may be identified and verified. The test set forth above is a highly subjective test, relying on judgment to determine with "substantial certainty" whether the competing carrier can receive the items within a "reasonable" time in the future. No doubt such an inquiry will take place before Ameritech receives interLATA relief; however, such a highly subjective inquiry is appropriate as part of the application of the public interest, convenience and necessity standard set forth in Section 271(d)(3) of the 1996 Act rather than as a means to assess checklist compliance.

The above discussion demonstrates that the issue of implementation schedules is a critical issue in this docket; however, the issue has been virtually ignored during both the initial and supplemental proceedings. Any meaningful analysis of Section 271(c) of the 1996 Act must address how implementation schedules are designed to operate

in the statutory scheme Congress envisioned. Only Staff has addressed this critical issue.

***B. A Reasonable Implementation Schedule may be a Term Implied in Ameritech's Interconnection Agreements as a Matter of Law***

Ameritech concedes the fact that no explicit implementation schedule is contained in any of its interconnection agreements. There could be many reasons for this fact. For example, Ameritech may not have desired to commit to actually providing a particular checklist item on the chance that it would not be able to provide the item at the time specified in the implementation schedule. By the same token, Ameritech's competitors may not have wanted to place implementation schedules in their interconnection agreements on the chance that they would not be ready to take the item on the date specified in the implementation schedule.

In situations such as these, where the parties have failed to include critical terms in their contracts, the law will imply a term where necessary in order to give effect to the purpose of the contract as a whole. Seidelman v. Kouvavus, 57 Ill. App. 3d 350 (1978). There can be no doubt that Ameritech was required to enter into interconnection agreements with requesting carriers pursuant to the 1996 Act. There can also be no doubt that Section 271(c) of the Act requires these agreements to have implementation schedules.

Because one purpose of these agreements was to induce Ameritech to open up its network in exchange for an opportunity to provide interLATA service, it is clear that to give effect to the purpose of the agreements as a whole, the law must imply implementation schedules into Ameritech's existing agreements.

If reasonable implementation schedules were viewed as implied covenants in these interconnection agreements, Ameritech could demonstrate checklist compliance through a Track B approach if it could demonstrate that a competing carrier had failed to actually take a checklist item in a "reasonable" amount of time. What is "reasonable" is obviously a fact-driven inquiry; an inquiry which could have been avoided had these agreements contained explicit implementation schedules. Nevertheless, "reasonableness" is the standard term applied to contracts which lack provisions addressing terms which are necessary to give effect to the contract as a whole. This issue has not been addressed in this record.

### **III. AMERITECH'S COMPLIANCE WITH THE CHECKLIST ITEMS**

In the next portion of this brief, Staff reviews the evidence presented in the supplemental proceedings, and addresses the two purposes for which this proceeding was initiated. The first purpose is Ameritech's compliance with the competitive checklist. As previously stated, Ameritech may demonstrate compliance with the checklist for a particular item if it is actually providing a checklist item to a qualifying carrier. In order to find that Ameritech is providing a checklist item to a qualifying carrier, the Commission must determine that the competing carrier is able to order and receive the



item in sufficient quantities and in a manner that will allow the competitor to provide service to its own customers on a commercial basis. It continues to be Staff's position that the only Ameritech agreement relevant for the purposes of determining checklist compliance is Ameritech's agreement with CCT. The CCT agreement is the only relevant agreement because CCT is the only facilities-based carrier providing service to both business and residential customers. The second part of Staff's analysis in the following section will review the evidence which relates to the inquiry in which the FCC and the DOJ will engage when Ameritech files its application for interLATA relief.

***B. Network Elements***

In the first phase of this proceeding, Staff maintained that Operation Support Systems ("OSS") are crucial to the development of local exchange competition, and recommended that Ameritech be required to demonstrate that its OSS are operational and functional. Staff contended that the OSS are mutually dependent on both Ameritech and the interconnecting carriers, and that Ameritech should not simply have the OSS set up on its side of the interface and await interconnection and use by other carriers. Staff noted that in order for the OSS to work in a commercially feasible manner, Ameritech has the added responsibility to ensure the interconnecting carriers have sufficient information of its OSS, including working with carriers that experience rejected orders and/or orders that require manual intervention. Further, Staff contended that internal testing of its OSS by Ameritech was not sufficient for the systems to be deemed operationally ready, or "commercially feasible." Commercially